UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA

STAY THE COURSE WEST VIRGINIA, a
West Virginia unaffiliated independent
expenditure political action committee;
DAVID BAILEY, in his capacity as Chairman
and Treasurer of Stay the Course West Virginia;
PINEVILLE LUMBER, INC., a West Virginia
Corporation; and **THOMAS STEPHEN BAILEY,**

Plaintiffs,

v.

Civil Action No. 1:12-cv-01658

NATALIE E. TENNANT, in her official capacity
as West Virginia Secretary of State and member
of the West Virginia State Election Commission;
and **SCOTT ASH,** in his official capacity as the
Prosecuting Attorney for Mercer County, West
Virginia, as a representative of the class of all
West Virginia Prosecuting Attorneys,

Defendants.

PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION

Plaintiffs, by counsel, state the following as their motion for a preliminary injunction:

1. Plaintiffs allege in their Complaint (Doc. 1) that their First Amendment rights to free speech are violated by certain provisions of the West Virginia Code and West Virginia Code of State Rules, and certain "policies" stated on the official website for the West Virginia Secretary of State, which prohibit corporations from making contributions to independent expenditure political action committees, prohibit independent expenditure political action

committees from soliciting or accepting corporate contributions, and/or prohibit individuals and corporations from contributing more than $1,000 per person per election to independent expenditure political action committees.

2. The Secretary of State has declared that her website is for public information purposes only, and that the publications attached to the Complaint as EXHIBIT E and EXHIBIT F are not intended as statements of policy. (Answer of Natalie E. Tennant, West Virginia Secretary of State ("Answer") (Doc. 11) at ¶ 21.)

3. The Secretary of State has admitted that the West Virginia Code was amended in 2010 so as to no longer prohibit corporate contributions to political action committees that are not affiliated with any candidate or candidate's campaign; that the West Virginia Code prohibits only corporate contributions to candidates and candidate's committees; and that the legislative rules prohibiting corporate contributions to independent expenditure political action committees are unenforceable. (Answer at ¶¶ 19-20, 36, 38, and 39.)

4. As a result of the admissions made by the Secretary of State, the only contested issue in this matter is whether the West Virginia $1,000 per person per election limit on political contributions is unconstitutional as applied to independent expenditure political action committees and the individuals and corporations that wish to contribute to such committees.

5. Plaintiffs will suffer irreparable harm of a significant magnitude if the Defendants are not preliminarily enjoined from enforcing the $1,000 per person per election political contribution limit so as to limit contributions by individuals and corporations to independent expenditure political action committees.

6. Defendants will not suffer any irreparable harm if a preliminary injunction is granted in this matter.

7. Plaintiffs will likely prevail on the merits of this case as a matter of law.

8. The public interest will be served by the issuance of a preliminary injunction prohibiting the enforcement of the challenged provisions as to the Plaintiffs and others similarly situated.

WHEREFORE, for the reasons stated above, which are more fully discussed in the accompanying Memorandum, Plaintiffs respectfully request that this Court preliminarily enjoin the Defendants from applying and enforcing West Virginia Code §§ 3-8-12(f) and 3-8-12(g) (2011) and West Virginia Code of State Rules § 146-3-5.2 (2008) so as to place any limitation on contributions from individuals and corporations to Stay the Course West Virginia, an independent expenditure political action committee.

Date: July 2, 2012

STAY THE COURSE WEST VIRGINIA,
DAVID BAILEY, PINEVILLE LUMBER,
INC., and THOMAS STEPHEN BAILEY,

By Counsel

/s/ W. Bradley Sorrells

Allen R. Prunty (WV Bar No. 2989)
W. Bradley Sorrells (WV Bar No. 4991)
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West Virginia Prosecuting Attorneys,

Defendants.

CERTIFICATE OF SERVICE

I, W. Bradley Sorrells, counsel for the Plaintiffs, hereby certify that on this 5th day of July, 2012, I electronically filed the foregoing *Plaintiffs' Motion for a Preliminary Injunction* with the Clerk of the Court using the CM/ECF system, which will send notification of such filing to the following:

Doren Burrell, Esquire
Senior Assistant Attorney General
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305
Counsel for the WV Secretary of State

And I certify that on the 3rd day of July, 2012, I served the foregoing *Plaintiffs' Motion for a Preliminary Injunction* upon the following by regular U.S. Mail, postage fully paid:

Doren Burrell, Esquire
Senior Assistant Attorney General
Office of the Attorney General
State Capitol Complex
Building 1, Room E-26
Charleston, West Virginia 25305
Counsel for the WV Secretary of State

Scott Ash, Esquire
Mercer County Prosecuting Attorney
120 Scott Street, Suite 200
Princeton, West Virginia 24740

/s/ W. Bradley Sorrells
W. Bradley Sorrells (WV Bar No. 4991)
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